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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
The Development of Operational,)
Technical, and Spectrum Requirements)
for Meeting Federal, State and Local)
Public Safety Agency Communication)
Requirements Through the Year 2010)
)
Establishment of Rules and Requirements)
for Priority Access Service)

WT Docket No. 96-86

REPLY COMMENTS OF GTE SERVICE CORPORATION

GTE Service Corporation ("GTE"), on behalf of its affiliated telecommunications companies, hereby submits its reply comments in response to the Federal Communications Commission's ("FCC" or "Commission") *Second Notice of Proposed Rulemaking* in the above-captioned proceeding.¹

On October 24, 1997, the FCC released its *Second Notice* that, among other things, sought comment on whether it should establish wireless priority access service ("WPAS") on commercial mobile radio systems for use during emergency and disaster situations. On December 24, 1997, several parties filed comments in response to the *Second Notice's* proposal to establish procedures that would give National Security/Emergency Preparedness ("NS/EP") personnel primacy on wireless systems

¹ *Second Notice of Proposed Rulemaking*, The Development of Operational, Technical, and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010; Establishment of Rules and Requirements for Priority Access Service, FCC 97-373 (Oct. 24, 1997) ("*Second Notice*"). The date for filing reply comments was extended to January 26, 1998 by *Order*, DA No. 97-2667 (Dec. 19, 1997).

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during times of emergency. The opening comments generally supported the creation of WPAS as consistent with the public interest. As GTE argued in its opening comments, carrier participation should be voluntary. At the same time, the Commission should adopt a technical, operational, and legal framework to promote the most effective use of WPAS.

I. THERE IS STRONG SUPPORT IN THE RECORD FOR WPAS RULES

The majority of the parties commenting on WPAS implementation agree with GTE that some WPAS rules are necessary and in the public interest.² As demonstrated by the National Communications System's ("NCS") petition, there is a growing demand for alternative telecommunications capabilities among parties that have NS/EP designated, contracted, or related public safety functions. WPAS will help meet those urgent NS/EP needs. In the light of this significant public interest benefit, GTE urges

² See Comments of 360° Communications Company, WT Docket No. 96-86, at 2-3 (filed Dec. 23, 1997) ("360° Communications Comments"); Comments of BellSouth Corporation, WT Docket No. 96-86, at 3-6 (filed Dec. 24, 1997) ("BellSouth Comments"); Comments of the Cellular Telecommunications Industry Associations, WT Docket No. 96-86, at 10-11 (filed Dec. 24, 1997) ("CTIA Comments"); Comments of the City of Long Beach, California, WT Docket No. 96-86, at 6 (filed Dec. 22, 1997) ("City of Long Beach, CA Comments"); Comments of Motorola, Inc., WT Docket No. 96-86, at 23 (filed Dec. 24, 1997) ("Motorola Comments"); Comments of the Manager, National Communications System, WT Docket No. 96-86, at 3-4 (filed Dec. 22, 1997) ("NCS Comments"); Comments of Nextel Communications, Inc., WT Docket No. 96-86, at 6-7 (filed Dec. 22, 1997) ("Nextel Comments"); Comments of the Personal Communications Industry Association, WT Docket No. 96-86, at 3-4 (filed Dec. 24, 1997) ("PCIA Comments"); Comments of Southwestern Bell Mobile Systems, Inc., WT Docket No. 96-86, at 1-2 (filed Dec. 22, 1997) ("Southwestern Bell Comments"); and Comments of UTC, The Telecommunications Association, WT Docket No. 96-86, at 11 (filed Dec. 23, 1997) ("UTC Comments").

the Commission to permit all providers of two-way Commercial Mobile Radio Services ("CMRS"), including resellers, to offer the service on a volunteer basis.³

Despite the widespread support for WPAS implementation, a handful of parties urge the Commission not to adopt wireless priority access rules. These parties assert that: (1) increases in the amount of dedicated public safety spectrum will obviate the need for WPAS; (2) market forces and increases in CMRS capacity will render WPAS rules unnecessary; and (3) WPAS will violate the Congressional goal in allocating new public safety spectrum. As explained below, the Commission should reject each of these arguments.

First, while the allocation of additional bandwidth for public safety may reduce the need for wireless priority access service, it will not, as suggested by Bell Atlantic and others parties, entirely eliminate that need.⁴ Because the severe emergency situations faced by NS/EP personnel often are not predictable, it is unlikely that all official emergency communications needs can be addressed by the allocation of new spectrum in the 746-806 MHz band. Some public safety systems simply will not provide service over a large enough area to meet the needs of NS/EP personnel. Moreover, it may be necessary to rely on the facilities of commercial carriers in order to have access to telecommunications services reaching locations throughout the country. Thus, since

³ As pointed out by GTE in its opening comments, air-ground service should be excluded, since it is not likely to be a subscription service for NS/EP personnel. See Comments of GTE Service Corporation, WT Docket No. 96-86, at 12 (filed Dec. 24, 1997).

⁴ See Comments of Bell Atlantic Mobile, Inc., WT Docket No. 96-86, at 3-7 (filed Dec. 19, 1997) ("Bell Atlantic Comments"); Nextel Comments at 7; and Southwestern Bell Comments at 2.

it appears virtually certain that NS/EP personnel will continue to need access to commercial CMRS systems (provided on a voluntary basis by the carriers), even with additional dedicated public safety spectrum, the Commission should adopt appropriate WPAS rules.

Second, Bell Atlantic and Primeco oppose WPAS implementation on the basis that market forces will meet NS/EP needs without FCC priority access rules and that, in any event, increases in CMRS capacity will likely render a new priority access system unnecessary.⁵ GTE concurs, as discussed below, that market forces should drive the development of WPAS in significant respects, at least when the service is first initiated. At the same time, however, it is important for the Commission to adopt technical and other standards, as well as liability protections, for those carriers who do provide WPAS. WPAS rules are needed to provide the technical, operational, and legal framework for those carriers desiring to provide WPAS to ensure that WPAS can be accessed on a compatible basis throughout the country. Thus establishing WPAS standards will not negate market forces, it will simply focus them.

Moreover, the conclusion that increases in CMRS capacity alone will negate the need for WPAS is highly speculative. As discussed above, access to commercial CMRS spectrum will always be necessary for NS/EP personnel. As explained by GTE in its opening comments, it is essential to provide certain standards to govern WPAS to make the service most effective for users and to provide essential guidelines for the carriers to promote their participation.

⁵ See Bell Atlantic Comments at 3-7; and Comments of Primeco Personal Communications, LP, WT Docket No. 96-86, at 5 (filed Dec 23, 1997).

Third, Bell Atlantic argues that adopting priority access rules may undermine Congress's goal in allocating new public safety spectrum by increasing public safety agencies' reliance on commercial spectrum.⁶ The record makes clear that priority access service is not "designed or intended to function as a substitute for, or viable alternative to Public Safety Communications Systems."⁷ In fact, no party in this proceeding has argued that WPAS should usurp ongoing efforts to allocate new spectrum for public safety agencies. Rather, while the new public safety spectrum no doubt will be put to use by public safety agencies, such agencies will, as discussed above, still need access to commercial CMRS spectrum, thus rendering necessary WPAS rules.

The record in this proceeding demonstrates that public safety agencies have overwhelming communications needs. The public interest is served by addressing these needs through the allocation of additional spectrum. However, to the extent that NS/EP officials still need access to CMRS spectrum, WPAS will serve as an appropriate option. Failure to adopt WPAS rules would simply hamper public safety agencies' ability to respond effectively in times of crisis. Certainly, Congress cannot have intended this result.

The Commission should act in accordance with the weight of the comments in this proceeding and establish WPAS for commercial CMRS systems. While the provision of WPAS should be voluntary, the Commission necessarily must adopt

⁶ See Bell Atlantic Comments at 8-9.

⁷ See City of Long Beach, CA Comments at 6.

regulations governing the nature of the service when it is provided. These rules should be structured in accordance with the framework outlined in the next section.

II. CMRS CARRIERS SHOULD BE PERMITTED TO PROVIDE WPAS ON A VOLUNTARY BASIS, SUBJECT TO DEFINED TECHNICAL, OPERATIONAL, AND LEGAL STANDARDS

A. At Least Initially, WPAS Participation Should Be Market-Driven

The majority of parties commenting on WPAS implementation agree with GTE that the Commission initially should rely on parties to participate voluntarily in the offering of a wireless priority access service.⁸ The Commission should not require CMRS operators to provide WPAS service because it is unlikely that such a measure would be effective. As explained by 360° Communications, mandatory WPAS likely would be unsuccessful because "mandates to provide particular services are often not compatible with the actual need for the services."⁹ Rather, a voluntary scheme would allow providers to respond to the actual demands of potential WPAS customers. Moreover, voluntary roll-out of WPAS is consistent with the Congressional goal of relying on competition to drive the development of the telecommunications marketplace.¹⁰ Indeed, in GTE's view, wireless carriers that do not provide WPAS will be at a competitive disadvantage vis-a-vis other wireless carriers in the CMRS

⁸ See 360° Communications Comments at 2-3; Comments of AMSC Subsidiary Corporation, WT Docket No. 96-86, at 2 (filed Dec. 22, 1997); BellSouth Comments at 3-6; CTIA Comments at 10-11; Motorola Comments at 23; NCS Comments at 6-7; PCIA Comments at 3-4; and Southwestern Bell Comments at 1-2.

⁹ See 360° Communications Comments at 3.

¹⁰ See H.R. Rep. No. 104-458, at 117 (1996), *reprinted* in 1996 U.S.C.C.A.N. 128.; and Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 61.

marketplace. If marketplace forces do not develop as expected, however, the Commission can revisit the issue at the request of National Communications System.

Consistent with reliance on the marketplace, GTE agrees with PCIA that CMRS carriers should have the flexibility to decide how to provide WPAS (within the Commission-established framework). In particular, CMRS carriers should not be required to set aside spectrum for the provision of WPAS.¹¹ A required spectrum set-aside would be contrary to a marketplace philosophy¹² and likely would result in inefficient use of spectrum.¹³

While participation in WPAS should be voluntary, the need still exists for critical technical, operational, and legal standards. CTIA argues that *any* level of regulation would "reduce incentives for carrier participation and will restrict variations in service offerings."¹⁴ While GTE agrees that over-regulation of WPAS is contrary to the public interest, certain ground rules are necessary to promote carrier participation in WPAS. If the Commission allows the market to work within a reasonably flexible regulatory scheme, as proposed here, carriers would have, in GTE's view, an increased incentive for providing WPAS.

B. WPAS Should Be Provided Pursuant to the PACA Standards

As noted above, it is essential that WPAS be provided according to certain technical and operational standards. GTE supports the use of the PACA standards

¹¹ See PCIA Comments at 4-5.

¹² See 360° Communications Comments at 2; and CTIA Comments at 11-12.

¹³ See CTIA Comments at 11-12.

¹⁴ *Id.*

because they are sufficiently developed for the effective implementation of nationwide WPAS. As GTE discussed in its opening comments, the PACA standard to support TDMA exists in final form, and the CDMA standard should be finalized in the second quarter of 1998. Reliance on the PACA standard will also accommodate Government Emergency Telecommunications Service ("GETS"), as GTE urged the Commission in its opening comments. Indeed, the GETS priority access system can accommodate priority usage on analog wireless phones.

C. CMRS Operators That Provide WPAS Should Be Entitled to Full Cost Recovery

The commenting parties generally agreed that CMRS carriers should be entitled to full cost recovery in the event they provide WPAS in response to public safety demand.¹⁵ Indeed, in the event that the Commission were to mandate the offering of WPAS, it would be necessary to establish adequate cost recovery rules and procedures.¹⁶ Certainly, WPAS users should pay a fair and reasonable price for the service.

D. CMRS Operators That Provide WPAS Should Be Entitled to Full Liability Protection

There is virtually unanimous support in the record for the proposal that CMRS operators who provide WPAS in accordance with the Commission's Rules be entitled to *full* liability protection.¹⁷ For example, Motorola concludes that the willingness of

¹⁵ See 360° Communications Comments at 2; and Southwestern Bell Comments at 2-3.

¹⁶ See 360° Communications Comments at 2; and CTIA Comments at 11-12.

¹⁷ See 360° Communications Comments at 3-4; BellSouth Comments at 6-7; CTIA Comments at 13-15, Motorola Comments at 5, 23; PCIA Comments at 5-6; and Southwestern Bell Comments at 3-4.

carriers to provide priority access will be "substantially enhanced" if it were clear that they were not subject to liability under Section 202.¹⁸ GTE agrees that such action is necessary to encourage carrier provision of WPAS. Providers will be unwilling to offer WPAS if they must do so under the cloud of potential liability. Therefore, the Commission should provide blanket protection for WPAS providers from liability under Section 202. After all, WPAS providers will be serving the public interest, on a voluntary basis, in order to assist NS/EP personnel to respond to emergencies. It is inconceivable that the provision of such services could constitute "*unjust or unreasonable*" discrimination under the Communications Act.

The Commission also must address liability concerns arising out of the placement of WPAS and 911 calls during times of emergency. Such resolution can be achieved by clear Commission guidance and without including 911 calls within the priority levels established for WPAS.

E. The Commission Should Work With the NSTAC and CPAS Subgroup Bodies To Address Administration Issues

GTE reiterates its support for the recommendations of the September 1995 CPAS Subgroup Report issued under the Wireless Services Task Force of the President's National Security Telecommunications Advisory Committee ("NSTAC"), which proposed a five-level priority system for local, state/regional, and federal disasters.¹⁹ The five-level qualifying criteria appear to satisfy the minimum

¹⁸ See Motorola Comments at 23.

¹⁹ The report proposed the following priority levels: (1) Executive Leadership and Policy Makers; (2) Disaster Response/Military Command and Control; (3) Public Health, Safety, and Law Enforcement Command; (4) Public Services, Utilities, and Public Welfare; and (5) Disaster Recovery.

requirements for a priority level system that addresses the response requirements of appropriate federal, state, and local NS/EP officials. GTE believes the Commission should work with the NSTAC CPAS Working Group to define the necessary requirements for administering WPAS.

III. CONCLUSION

Adoption of WPAS rules consistent with the policies outlined in GTE's opening comments and above will further the public interest from the perspectives of both NS/EP users and CMRS providers.

Respectfully submitted,

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